



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nginya v HFC Limited & 2 others (Miscellaneous Civil Application  
E186 of 2024) [2025] KEHC 10717 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10717 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION E186 OF 2024**

**FN MUCHEMI, J**

**JULY 17, 2025**

**BETWEEN**

**BURUNJE NJOROGE NGINYA ..... APPLICANT**

**AND**

**HFCLIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL M GATHGO T/A VALLEY AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**PUCHBI ENTERPRISES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Brief facts**

1. The application dated 23<sup>rd</sup> December 2024 seeks for orders of transfer of Nairobi CMCC No. E455 of 2024 *Puchbi Enterprises Limited & Burunje Njoroge Nginya v HFC Limited & Valley Auctioneers* to Chief Magistrate's Court at Thika and upon transfer the said matter be consolidated with Thika CMCC No. M5 of 2024 *Burunje Njoroge Nginya v HFC Limited Valley Auctioneers & Puchbi Enterprises Limited* for trial and final determination.
2. The 1<sup>st</sup> and 2<sup>nd</sup> respondents opposed the application and filed a Replying Affidavit dated 17<sup>th</sup> April 2025.

**Applicant's Case**

3. The applicant states that the 3<sup>rd</sup> respondent filed the suit in *Nairobi CMCC No. E455 of 2024* restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondent from undertaking sale by public auction of land reference number Gatwanyaga/Ngolibia Block 2/465 which he owns. Whilst unaware of the said suit, the applicant states that he initiated legal proceedings in *Thika CMCC No. M5 of 2024* against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents with the 3<sup>rd</sup> respondent identified as an interested party.



4. The applicant states that both suits are pending and are awaiting to be fixed for hearing. The applicant further states that the parties are the same and the controversy between the parties is similar. Thus, the applicant argues that in order to avoid conflicting judgments, both suits ought to be consolidated.
5. The applicant avers that no party shall be disadvantaged or prejudiced by the transfer and consolidation. The applicant further avers that the consolidation and transfer of the cases to a single court will streamline the legal proceedings, prevent conflicting judgments and ensure fairness to all the parties involved.
6. The 3<sup>rd</sup> respondent filed a Replying Affidavit dated 17<sup>th</sup> April 2025 in support of the application. The 3<sup>rd</sup> respondent argues that consolidating the two cases will significantly contribute to the expeditious disposal and dispensation of justice while saving valuable court time and resources. Further, the 3<sup>rd</sup> respondent states that the two matters are founded on the same facts making consolidation feasible as it would be injudicious to allow multiple matters proceedings based on the same facts.

### **The 1<sup>st</sup> & 2<sup>nd</sup> Respondents' Case**

7. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state that they filed a preliminary objection dated 1<sup>st</sup> July 2024 in *Thika MCELC No. E049 of 2024* now *Thika CMCC No. M5 of 2024* on the basis that the entire suit was *sub judice* as *Nairobi CMCC No. E455 of 2024* was filed prior to the suit in Thika. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state that the preliminary objection was dismissed via ruling delivered on 14<sup>th</sup> November 2024. Being aggrieved by the said ruling, the 1<sup>st</sup> and 2<sup>nd</sup> respondents aver that they have lodged an appeal being *HCCA No. E344 of 2024*.
8. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state that the appeal is yet to be heard and determined and should consolidation of the two suits be permitted before the appeal is heard the appeal shall be rendered nugatory. Further, in the event the appeal is successful, the instant application will not be necessary as the Thika suit would be stayed under the sub judice rule.
9. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state that they have filed a preliminary objection dated 17<sup>th</sup> January 2025 to the application in the Thika suit on the basis that the application is an affront to the mandatory provisions of Section 7 of the *Civil Procedure Act* in light of the fact that a similar application in the Nairobi suit has already been heard and determined. The preliminary objection is yet to be heard and determined.
10. The 1<sup>st</sup> and 2<sup>nd</sup> respondents aver that the present application is an attempt by the applicant to avoid the consequences of the ruling delivered in the Nairobi suit which dismissed the application for interim injunction to be granted. The applicant's aim through seeking consolidation and transfer of the Nairobi suit to Thika is an attempt to get a favorable outcome of the application for an interim injunction in the Thika suit since the same is still pending hearing and determination.
11. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state that it would be prudent to await the outcome of the appeal and the preliminary objection on res judicata before proceeding with a determination on the present application.
12. The applicant filed a Further Supporting Affidavit dated 20<sup>th</sup> May 2025 and states that although the cause of action in both suits emanate from the same transaction, the foundation or rationale for the causes of action is distinct and the remedies sought are disparate. Further, the applicant avers that there is no stay of proceedings in *Thika CMCC No. M5 of 2024* pending the intended appeal. Thus there exists no impediment to the progression of the cases or to the parties undertaking any actions prior to the outcome of the appeal.



13. The applicant states that he is neither an active party nor has he ever engaged in the prosecution or participated in the proceedings in *Nairobi CMCC No. E455 of 2024*. The applicant further states that the verifying affidavit dated 17<sup>th</sup> May 2024 deponed by Purity Wakiru Waithika reveals that she failed to disclose that she possessed the requisite permission to initiate the suit on his behalf. Furthermore, the affidavit fails to comply with Order 1 Rule 13 and Order 4 Rule 12 of the [Civil Procedure Rules](#) as there exists no authoritative evidence to substantiate that the suit was filed on his behalf.
14. The applicant argues that the doctrine of *res judicata* does not apply in the instant case as there have been no final determinations made in the prior proceedings that would encompass the specific claims currently before the court.
15. The applicant avers that interests of justice would be better served by allowing all matters to proceed without a stay as the causes of action are different and the remedies sought are different.
16. Parties put in written submissions.

### **The Applicant's Submissions.**

17. The applicant relies on Section 18 of the [Civil Procedure Act](#) and the case of *David Kabungu v Zikarenga & 4 Others* Kampala HCCS No. 36 of 1995 and submits that the power to transfer a matter is discretionary and in the exercise of that discretion, the court has to consider whether it is desirable in all the circumstances that the common questions of law or fact arising, or the rights to relief claimed in the several causes or matters should be disposed of at the same time.
18. Relying on the cases of [Law Society of Kenya v The Centre for Human Rights and Democracy](#), Supreme Court of Kenya Petition No. 14 of 2013 and *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2000] eKLR, the applicant submits that the two suits ought to be consolidated as the parties in both suits are the same, the issues in dispute arise from the loan transaction and the same land parcel. The applicant further argues that consolidation will prevent duplication of efforts and promote consistency in legal representation and case management. Further, the court can avoid conflicting judgments and ensure a coherent resolution of the underlying issues.
19. The applicant argues that the central focus of the litigation revolves around the land in question and the use of the parcel of land as collateral, as it necessitates a consolidated approach to avoid unnecessary delays and resources spent on separate trials. The applicant further argues that it is prudent for both matters to be adjudicated concurrently given that the issues and witnesses in the cases before the subordinate courts are identical.
20. The applicant submits that the application for stay was adjudicated before the trial court and subsequently dismissed and is currently subject to appeal. The applicant argues that stay serves as a postponement of judicial proceedings allowing for further consideration of the matters at hand and does not indicate a lack of merit or an automatic judgment against any party. The applicant submits that given the distinct nature of the claims, it is crucial to ensure that each case receives proper consideration. Consolidating suits and maintaining clarity will uphold the integrity of the judicial system and the rights of all parties.

### **The 3<sup>rd</sup> Respondent's Submissions.**

21. The 3<sup>rd</sup> respondent refers to the cases of *RMG v NG & Another* (Nairobi HCCC No. 29 of 2009 (OS)), [Korean United Church of Kenya & 3 Others v Seng Ha Sand](#) (2014) eKLR; [Law Society of Kenya](#)



*v Democracy & 12 Others* (2014) eKLR Petition 14 of 2013; *Joseph Mzungu Nyoka v Vros Produce Limited & 525 Others* (2015) eKLR and *David Ojwang Okebe & 11 Others v South Nyanza Sugar Company Limited & 2 Others* (2009) eKLR and submits that the essence of consolidation is to facilitate the efficient and expeditious disposal of disputes.

22. The 3<sup>rd</sup> respondent further refers to the case of *EAN Kenya Limited v Job Sawers & 4 Others* (2007) eKLR and submits that the subject matter in both suits is similar. The 3<sup>rd</sup> respondent further submits that the suits are founded on the same facts and thus it would be injudicious to allow multiple matters proceedings based on the same facts. To support its contentions, the 3<sup>rd</sup> respondent relies on the cases of *Arnold Kipkirui Langat v Atticon Limited & 7 Others* (2021) eKLR and *Prem Lala Nabata & another v Chandi Prasad Sikaria* [2007] 2 Supreme Court Cases 551.
23. The 3<sup>rd</sup> respondent submits that consolidating the two cases will significantly contribute to the expeditious disposal and dispensation of justice while saving valuable court time and resources. Furthermore, consolidation will minimize the risk of conflicting judgments which will occur if the matters are heard independently.

### **The 1<sup>st</sup> & 2<sup>nd</sup> Respondents' Submissions**

24. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that the present application is an attempt by the applicant to avoid the consequences of the ruling delivered in the Nairobi suit which dismissed the application for an interim injunction to be granted. The applicant was always aware of the Nairobi suit however he only chose to bring the present application after the ruling dismissing the application for interim orders in the Nairobi suit was delivered on 20<sup>th</sup> December 2024.
25. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that the applicant admits to being aware of the Nairobi suit at all material times and argues that there are complex issues at stake. Despite being aware of the two suits, the applicant at no earlier point sought consolidation of the two suits.
26. The 1<sup>st</sup> and 2<sup>nd</sup> respondents argue that consolidation of the two suits at the current stage would be greatly prejudicial to their interests as they have successfully had an interim injunction prohibiting the sale of the property in question to be discharged in the Nairobi suit.
27. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that it would be prudent to await the outcome of the appeal and the preliminary objection on res judicata before proceeding with a determination on the present application.

### **The Law**

28. Section 18 of the *Civil Procedure Act* provides:-

On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

- a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-
  - I. Try or dispose of the same; or



- II. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- III. Retransfer the same for trial or disposal to the court from which it was withdrawn.

Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn

- 29. Section 18 of the Act empowers the High Court to withdraw and transfer a case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.
- 30. This principle was enunciated in the Ugandan case of *David Kabungu v Zikarenga* HCCC No. 36 of 1995 which held:-

Section 18(1)(b) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without the application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction....it is a well-established principle of law that onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused.....Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court which transfer is sought has no jurisdiction to try the case, transfer would be refused.....

- 31. In the case of *Hanzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* [2012] eKLR the court held:-

In my view, which view I gather from authorities and from the law. The court should consider such factors as the motive and character of the proceedings, the nature of the relief of remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.



32. It is evident from the record that on 21<sup>st</sup> May 2024, the applicant and 3<sup>rd</sup> respondent herein instituted a suit against the 1<sup>st</sup> and 2<sup>nd</sup> respondents in the Chief Magistrate's Court in Nairobi namely *CMCC No. E455 of 2024* seeking for orders declaring the intended sale of property Title Number Gatwanyaga/Ngolibia Block 2/465 by public auction illegal and irregular and an order stopping the intended sale of the property Title Number Gatwanyaga/Ngolibia Block 2/465 by public auction illegal and irregular. The applicant herein subsequently instituted a suit against the respondents herein in the Chief Magistrate's Court in Thika namely *ELC Case No. E049 of 2024* which is currently *CMCC No. M5 of 2024* seeking for the orders of a declaration that the intended sale of Land Reference Number Gatwanyaga/Ngolibia Block 2/465 to be conducted by the 2<sup>nd</sup> respondent or under its instructions is illegal and a nullity; an order discharging the applicant and land reference number Gatwanyaga/Ngolibia Block 2/465 for the guarantor's obligations over loans issued to the interested party by the 1<sup>st</sup> defendant; a permanent injunction restraining the 2<sup>nd</sup> defendant, agents, employees, servants or any other auctioneer from participating in any future public auction involving the land reference number Gatwanyaga/Ngolibia Block 2/465; general damages and punitive and exemplary damages.
33. It is therefore evident that the parties are disputing over the use of property Title Number Gatwanyaga/Ngolibia Block 2/465 which was charged as security for various loan facilities. The parties are similar even though the applicant claims that he did not institute the suit in Milimani. Furthermore, the prayers the parties seek in both suits are similar and concern the same property L.R. . GATUAYANGA.GOLIBA BLOCK 2/465.
34. It is my considered view that transferring and consolidating the two matters will allow for a comprehensive examination of the questions of law and fact which shall expedite the resolution of related issues. Furthermore, consolidation will minimize the risk of conflicting judgments and save on precious judicial time. Additionally, no party shall be prejudiced by the transfer and consolidation of the two suits as the respondents shall have a chance to participate in the proceedings.
35. The application dated 23<sup>rd</sup> December is hereby allowed in terms of prayers No. 2 and 3.
36. Each party to meet its own costs of this application.
37. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

